Supreme Court, U. S.
FILED
FEB 25 1977
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

No. 76-1020

SOCIALIST WORKERS PARTY, et al.,
Appellants,

vs.

MARCH FONG EU, Secretary of State of the State of California,
Appellee.

On Appeal from the United States District Court for the Northern District of California

Motion to Affirm and/or Dismiss

EVELLE J. YOUNGER
Attorney General of the State of California

IVER E. SKJEIE
Assistant Attorney General

CHARLTON G. HOLLAND
Deputy Attorney General

6000 State Building
San Francisco, CA 94102
Telephone: (415) 557-0566

Attorneys for Appellee March Fong Eu, Secretary of State of the State of California

BORG PRINTING COMPANY OF CALIFORNIA, 946 FIRST STREET, SAN FRANCISCO 94105

SUBJECT INDEX

Page

Motion 1

Introduction 1

Statutory and Factual Context of This Litigation..... 2

The District Court Made the "Hard Judgments" Required by *Storer* and Properly Concluded Section 6340, in the Context of This Litigation, Was Constitutional 5

The Appeal Regarding Section 6430 Is Now Moot Since California Has Effected a Basic Change ("Post Card" Registration) in the Manner Parties May Qualify for Ballot Access..... 12

California Does Not Deny Equal Protection to the Appellants by Permitting a Party to Remain Qualified by Fulfilling Requirements Different from Qualifying 13

The Appellants Cannot Legitimately Complain They Were Denied the Right to Place Their Name Next to a Candidate Who Was Nominated Pursuant to the Independent Nomination Procedure Since They and the Alternative of Qualifying as a Party Pursuant to Section 6430—an Alternative They Rejected 14

Conclusion 16

Appendix

TABLE OF AUTHORITIES CITED

Pages

Aetna Life Insurance Co. v. Haworth, 300 U.S. 227 (1937) 12

American Party of Texas v. White, 415 U.S. 767 (1974) 5, 6, 8, 9, 11

Buckley v. Valeo, 44 U.S. L.W. 4127 (Jan. 10, 1976) 9, 14

Hall v. Beals, 396 U.S. 45 (1969) 12

Jenness v. Fortson, 403 U.S. 431 (1971) 6

Lubin v. Panish, 415 U.S. 709 (1973) 9, 10, 14

MTM, Inc. v. Baxley, 420 U.S. 799 (1975) 15

Storer v. Brown, 415 U.S. 724 (1974) 5, 6, 7, 8, 9, 10, 11, 15

Williams v. Rhodes, 393 U.S. 23 (1968) 12

STATUTES

California Elections Code:

§ 204 5
§ 280 5
§ 300 ..... a2
§ 301 ..... a2
§ 302 ..... a3
§ 303 ..... a5
§ 304 ..... a5
§ 305 ..... a5
§ 306 ..... a6
§ 307 ..... a6
§ 308 ..... a6
§ 309 ..... a6
§ 310 ..... 4, a6

Pages

California Elections Code:

§ 311 ..... 5, a6
§ 313 4
§ 318 ..... a6
§ 500 ..... 5, a1
§ 501 ..... a7
§ 502 ..... a7
§ 506 ..... 5, a7
§ 507 ..... 5, a8
§ 508 ..... a9
§ 509 ..... a10
§ 510 ..... a10
§ 511 ..... a10
§ 512 ..... a11
§ 560 14
§ 6430 ..... 1, 2, 4, 6, 11, 13, 14
§ 6438 15
§ 10210 15

Statutes

1975, Ch. 704 ..... 4, 5
1976, Ch. 1191 1
1976, Ch. 1245 ..... a1
1976, Ch. 1438 ..... a1

OTHER SOURCES

N.Y. Con. Laws, Chap. 17, Sec. 136 9

Note: "Developments in the Law—Elections", 8 Har. L. Rev. 1111 (1975) 10

Secretary of State, Statement of the Vote

Nov. 1966 2
Nov. 1970 2
Nov. 1974 ..... 2, 3, 7

	Pages
Secretary of State, Report of Registration	
Jan. 1964	14
Jan. 1968	4
Jan. 1974	6, 7
Jan. 1976	4
May 1976	4
Supreme Court, Rules 16	1

In the Supreme Court of the United States

No. 76-1020

SOCIALIST WORKERS PARTY, et al.,
Appellants,

vs.

MARCH FONG EU, Secretary of State of the State of California,
Appellee.

On Appeal from the United States District Court for the Northern District of California

Motion to Affirm and/or Dismiss

Appellee, March Fong Eu, Secretary of State of the State of California, moves, pursuant to Supreme Court Rule 16, to affirm the judgment of the District Court on the ground that the questions presented are so unsubstantial as not to warrant further argument and/or to dismiss the appeal on the ground that the issues raised by appellants on appeal are moot.

INTRODUCTION

Appellee discusses below arguments in support of the District Court's judgment that section 6430 of the California Elections Code is constitutional.[1] However, the appellee

1. All section references are to the California Elections Code unless otherwise noted. Section 6430 has been amended but the criteria for qualification remain the same. Stats. 1976, Ch. 1191, Sec. 61.

calls the attention of this Court immediately to the fact that the statutory environment in which minor party qualification will take place in California has substantially changed. California has enacted "post card" registration and its impact is just beginning to be known. Whether actual course of minor party qualification will be altered is unknown. However, it is clear that the issues posed by this appeal based upon a former statutory environment are presently moot and the appeal of the appellants should be dismissed on that basis.

STATUTORY AND FACTUAL CONTEXT OF THIS LITIGATION

Section 6430 provides that a political group can qualify for the primary election ballot and thus for the general election ballot if it files a signature petition 135 days before the primary election with signatures equal to 10% of the vote in the last gubernatorial election or if it appears to the appellee 135 days before the primary election the group's registration is equal to 1% of the vote in the last gubernatorial election. These alternatives meant that to qualify for the state-wide ballot for the 1968 and 1970 general elections a political group had to obtain 660,587 petition signatures or have 66,059 voters registered, (Secretary of State, Statement of the Vote, November 1966, p. 4) for the 1972 and 1974 general elections a political group had to obtain 663,340 signatures or registration equal to 66,334 (Secretary of State, Statement of the Vote, November 1970, p. 7) and for the 1976 and 1978 general election a political group had and will have to obtain 636,460 signatures or have 63,646 voters registered. Secretary of State, Statement of the Vote, November 1974, p. 6.

At the time of the November 5, 1974 general election, there were 14,225,930 persons eligible to vote in California. Id. at 3. 9,928,364 of these eligible persons had in fact registered. Ibid. California has 80 districts for its Assemblymen,

(Id. at 53-55) 40 districts for its Senators (Id. at p. 51-52) and 43 districts for its Congressmen (Id. at 49-50). The average Assembly district contained about 124,000 registered voters. The average Senatorial district contained about 248,084 registered voters. The average Congressional District contained about 230,775 registered voters.

Twenty-nine Assembly districts were in the County of Los Angeles and, as of November 1975, had a total registration of 3,197,178 voters (Exhibit D)[2]. By contrast, the appellants at that point in time had mustered only the following registration totals for Los Angeles County (ibid):

(a) La Raza Unida Party	5,088
(b) Socialist Workers Party	118
(c) Libertarian Party	496
(d) Socialist Labor Party	34
(e) Prohibitionist Party	204

Interrogatories regarding party strength were sent to each party appellant. The appellant Socialist Workers Party and the appellant Socialist Labor Party refused to disclose the number of their dues paying members although they estimated their 1974 state-wide registration at 347 (Exhibit H) and at 238 voters (Exhibit G) respectively. The appellant Prohibitionist Party responded that it had 25 dues paying members and that in 1974 its registration constituted 506 voters. (Exhibit R). The appellant La Raza Unida Party estimated its registration at 20,664 as of January 1974 (Exhibit S). The appellant Libertarian Party refused to estimate its state-wide registration but claimed 406 dues paying members (Exhibit T).

---

2. These and following factual assertions, which are not based upon official publications of the appellee, are taken from exhibits attached or made supplementary to appellee's Motion for Summary Judgment and will be identified by exhibit letter. Cited copies of official publications will be sent to this Court's library to insure availability.

No party appellant indicated at any time it was making a serious attempt to circulate a signature petition or to increase its registration in an effort to qualify pursuant to section 6430. Importantly, the *total* miscellaneous (excluding qualified parties and voters who expressed no preference) registration for the entire state, of a total registration of 7,751,540 in January 1976 was 14,412. Secretary of State, Report of Registration, January 1976, p. 14. The total miscellaneous registration for the entire state, of a total registration of 8,710,756, in May 1976 was 15,644. Secretary of State, Report of Registration, May 1976, p. 5. In comparison, for the 1968 primary election, within 135 days of the primary, both the Peace and Freedom Party and the American Independent Party had qualified with almost twice the required number of registrants. The American Independent Party qualified with 107,263 registrants and the Peace and Freedom Party qualified with 105,100 registrants. Secretary of State, Report of Registration, January 1968, p. 71.

In 1938 the Townsend Party qualified for the ballot by its registration. In 1948 the Independent Progressive Party qualified for the ballot by petition. Apparently, for the 1972 primary election, the La Raza Unida Party made an effort of some undetermined seriousness and failed. (Exhibit S). Other than this questionable effort, there was no evidence before the District Court of a political group that had made a reasonably diligent effort to comply with section 6430, either by petition or by registration.

Until July 1, 1976, registration in California was performed by the signing of an affdavit in which the voter set forth certain information, including (if he wished) a political affiliation. Section 321 (repealed Stats 1975, Ch. 704). This affidavit of registration was taken before an officer (i.e., deputy registrar) authorized to administer oaths.

Ibid. There were no limits on the number of deputy registrars. Registration affidavits were handed out to any deputy registrar. Section 280 (repealed Stats 1975, Ch. 704). Registration could be performed almost anywhere, including the residence of the registrant. Section 204 (repealed Stats 1975, Ch. 704). The declaration of political affiliation could be changed at any time. Section 313 (repealed Stats 1975, Ch. 704).

Effective July 1, 1976, California changed to "post card" registration. Stats 1975, Ch. 704. The material sections of the new law, as currently in effect, are set forth in the Appendix. No new restrictions were imposed. The use of deputy registrars was retained. Section 500(k). However, now all a voter has to do is fill out a registration card and mail that card into the County Clerk. Section 506(d). The requirement of an affidavit taken under oath before a deputy registrar was dropped. Section 560. The registration cards are made freely available to any one. Section 507. A voter can register by mailing a card to any County Clerk and he will become registered. Section 311.

THE DISTRICT COURT MADE THE "HARD JUDGMENTS" REQUIRED BY STORER AND PROPERLY CONCLUDED SECTION 6430, IN THE CONTEXT OF THIS LITIGATION, WAS CONSTITUTIONAL.

The appellants argue that the District Court applied a "litmus-paper" test by finding that California only required a registration equal to 1% of the vote in the last gubernatorial election and then, since a 1% signature petition requirement had been upheld in the *American Party of Texas v. White,* 415 U.S. 767 (1974), found constitutional the California requirement. In fact, the District Court made the "hard judgments" required by *Storer v. Brown,* 415 U.S. 724, 730 (1974) and examined in detail the facts offered by both sides in light of *Storer* and *American Party.*

In *Storer* this Court directed the District Court to consider certain issues critical to the question of ballot access. Id. at 738-742. These issues may be generalized as the percentage of voters a political group is required to demonstrate as its support, the true number of voters among whom the political group can seek this support, the history of qualification for the ballot and whether the procedural requirements for qualification hinder or facilitate access. The District Court explored these issues, did not simply apply a litmus paper test, and found as a matter of fact California did not impose excessive burdens on minority political groups. These issues will be examined in turn below.

In *Jenness v. Fortson,* 403 U.S. 431 (1971), this Court upheld a 5% petition requirement. In *Storer* at 738 and *American Party* at 789, this Court implied that the 5% requirement could be used as a benchmark for determining the permissible limits of a percentage qualification. Section 6430 has alternative methods of qualification, one of which permits qualification with only a 1% showing of voter support. Section 6430(c). Facially, then California comes well within *Jenness* and certainly within *American Party* (1% of the past gubernatorial vote).

Storer required the District Court to determine if the statutory percentage was actually a higher percentage when the pool of voters available to a political group was examined. Id. at 739. In this respect, section 6430(c) requires clearly less than a 1% of the available voters. Registration, by way of illustration, on January 1, 1974 stood at 9,116,391 voters. Secretary of State, Report of Registration, January 1974, p. 5. The 1% registration requirement at that time constituted only 7/10ths of 1% of the total registration. Moreover, in terms of the persons eligible to vote, the percentage requirement was even smaller. At the general election on November 5, 1974, the Secretary of State estimated

that 14,225,930 persons were eligible to register to vote. Secretary of State, Statement of the Vote, November 1974, p. 4. Using this figure (which constitutes the total number of voters from which the appellants could demonstrate their support), the percentage of the available pool is only .005.[3] Accordingly, considering the registered 9,000,000 voters before whom the appellants wish to have California place their party name, the showing of support required is certainly no more than reasonable.

The appellants relied, regarding historical experience, heavily upon the following statement in *Storer* at 742:

> "[I]n the context of California politics, could a reasonably diligent independent candidate be expected to satisfy the signature requirements, or will it be only rarely that the unaffiliated candidate will succeed in getting on the ballot? Past experience will be a helpful, it not always an unerring, guide; it will be one thing if independent candidates have qualified with some regularity and quite a different matter if they have not." Jur. Statement, p. 12-13.

The facts presented to the District Court were that it was not "rarely" that a party qualified in California.[4] Two

---

3. The registration percentage clearly is subject to fluctuation. January 1976 the total registration was 7,751,540, making the percentage about .008. Secretary of State, Report of Registration, January 1976, p. 5. However, the percentage of those persons eligible to register should not vary significantly.

4. The appellee does not read the quotation from *Storer* as implying necessarily that "parties" must qualify for the ballot on a regular basis as might independent candidates. Later in *Storer* at 745, this Court pointed out that fundamental differences exist between party qualification and the independent nomination such as, under California law, the fact that party qualification means certain organizational responsibilities and internal changes that might be unacceptable. Moreover, other things being equal, voters are probably more willing to sign a petition for an individual candidate than they are to sign a petition in which they must declare they support a party. Significantly, in *American Party* this Court did not adopt regular qualification as a litmus paper test of the validity of party access restrictions. Id. at 782-784.

parties had qualified in 1968 (and with almost twice the required registration). Compare *Jenness* at 439. The appellants had pointed to only one unquestionable effort by appellants La Raza Unida Party to qualify. None of the appellants themselves were making any current effort to qualify. The appellants simply were unable to demonstrate historically that a reasonably diligent party could not satisfy the requirements of section 6430.

Appellants argue that the appellee attacked the "seriousness" of the appellant's efforts to gain ballot access as an answer to the failure of the appellants to qualify. Jur. Statement, pp. 20-21. Appellee concedes the appellants are "serious" but question, in light of their registration and dues paying membership, whether they are in fact supported *as parties* by any meaningful percentage of the California electorate. The qualification of individual candidates by the independent nomination procedure does not mean there is support for any of the appellants as a party. The fact that the appellants did not qualify for the 1976 election may be explained by the fact that they took advantage of California's liberalized independent nomination procedure and directed their energies to qualify individual candidates. Or, it may be more reasonably explained by a lack of voter support for the appellants as parties.

The appellants want essentially instantaneous access to the ballot. This Court in *Storer* emphasized that California did not have to choose "ineffective means to achieve its aims." Id. at 736. And, in *American Party* made it clear that a State did not have to make qualification easy:

> "Hard work and sacrifice by dedicated volunteers are the life blood of any political organization. Constitutional adjudication and common sense are not at war with each other, and we are thus unimpressed with arguments that burdens like those imposed by Texas

> are too onerous, especially where two of the original party plaintiffs themselves satisfied their requirements." Id. at 787.

Unquestionably, California must make party ballot qualification "feasible" *(Storer* at 746), must not "unfairly or unnecessarily burden" a minority party, (*Lubin v. Panish,* 415 U.S. 709, 716 (1973)) and may not use its ballot qualification requirement as "a mere device to always, or almost always, exclude a party with significant support from the ballot." *American Party* at 783. However, in each of these decisions this Court recognized the states' compelling interest to withhold ballot access where significant measurable support is not demonstrated. California's interest in this regard bears emphasis.

California, this Court has recognized, has a decided interest in discouraging "splintered parties and unrestrained factionalism." *Storer* at 736. Further, a government does not have to expend its resources to encourage factionalism. *Buckley v. Valeo* ..... U.S. ..... (1976), 44 USLW 4127, 4155-4157 (January 30, 1976). Appellee is not unmindful that in Michigan for the 1974 general election nine separate parties appeared on the ballot (Exhibit C) or that in New York ten parties appeared on the general election ballot) (Exhibit B) or that the appellants introduced below a 1972 Colorado ballot which contained nine parties with nominees for presidential electors. New York, for example, only requires a petition of 20,000 registered voters to qualify a party to run its candidates for all offices on the general election ballot. New York Con. Laws, Ch. 17, section 136. Such a system only encourages "laundry list" ballots. The danger of such a ballot is that the more decisions, especially on the general election ballot, a voter must make, the greater the chance for confusion, error in ballot marking, and voter

frustration in pursuing an intelligent decision. *Lubin* at 715. The New York voter in particular is confronted with a confusing ballot since in that state parties can nominate as their candidate the nominees of another party—a variation of the discarded cross-filing system of California.

This Court has stated that California is not required to follow the course of other states. *Storer* at 736. The more candidates that appear on the general election ballot for a particular office the fewer voters the winner requires in order to gain office. The results of elections then may be determined by combinations of voters who do not necessarily reflect the sentiment of a majority of voters. In close elections, the importance of a small party assumes an importance vastly disportionate to its actual voter support, discouraging coalition and accommodation with major parties and reinforcing ideological and personality cult fragmentation. See Note: "Developments in the Law—Elections", 88 Har.L.Rev. 1111, 1137-1138 (1975). A run-off, at least for state-wide candidates, is no alternative since in California that would require another election involving potentially over 9,000,000 registered voters with the resulting untoward expense, effort and time to both government and to the candidates. California's restrictions on the ballot serve compelling interests and, as long as parties with significant support who exercise reasonable diligence to demonstrate that support have access to that ballot, California is legislating within constitutional limits.

The appellants deny that California's restrictions on access serve compelling interests and argue that a registration requirement cannot be compared to a petition requirement approved elsewhere since registration to their mind requires a higher level of commitment. This argument, of course, is double-edged: registration (assuming the voter makes the distinction the appellants make) then is a more

"measurable" indication of voter support. *American Party* at 782. In any event, California compensates for such a "higher" level of commitment since it only requires a percentage showing of 1% which in practice is less than 1%. Moreover, there were no insurmountable obstacles to registration. Registration could be performed almost anywhere. There were no restrictions upon who could become a deputy registrar. Affidavits of registration were made available to any interested group. These factors, coupled with the tiny registration requirement, unquestionably lead the District Court to conclude that the difference between a petition and registration was not a significant factor.

The deadline for qualification was considered by the District Court. California requires a January qualification for a June primary. Substantial evidence was introduced to the effect, especially for Los Angeles County with its 5,000 precincts each containing 500 voters, such a lead time was necessary. Exhibit D. Appellants argued that more time is necessary nearer in time to the primary since interest is higher in the election at this point. This argument is merely an assertion without any factual basis. In fact, the closer the election the less likely a voter will affiliate with a party that has no obvious chance of success. Nevertheless, the appellants made no effort to qualify pursuant to section 6430 at any time, leaving the District Court without any basis upon which to judge whether additional time would have been helpful.

The fact that the appellants simply complained about the deadline without making any effort to qualify meant that the District Court could reply upon the following language from *Storer* at 734:

> "In any event, neither Storer nor Frommhagen is in position to complain that the waiting period is one year, for each of them was affiliated with a qualified

party no more than six months prior to the primary. As applied to them, section 6830(d) (Supp. 1974) is valid."

The appellants never were "in position" to raise this issue and the deadline as to them is valid. The fact that other district courts have struck down similar deadlines has no bearing on this appeal. The position of the appellants must be contrasted with the American Independent Party in *Williams v. Rhodes,* 393 U.S. 23 (1968) where the party substantially exceeded Ohio's numerosity requirement but simply did not do so within Ohio's deadline. Id. at 26.

THE APPEAL REGARDING SECTION 6430 IS NOW MOOT SINCE CALIFORNIA HAS EFFECTED A BASIC CHANGE ("POST CARD" REGISTRATION) IN THE MANNER PARTIES MAY QUALIFY FOR BALLOT ACCESS.

In *Hall v. Beals,* 396 U.S. 45 (1969) a district court upheld as constitutional a Colorado statute which required a six month residency before a citizen could vote. The plaintiffs filed an appeal with this Court but during the pendency of the appeal Colorado shortened the residency period to two months. This Court considered that the ". . . case has therefore lost its character as a present, live controversy of the kind that must exist if we are to avoid advisory opinions on abstract propositions of law." Id. at 48. See also, *Aetna Life Insurance Co. v. Haworth,* 300 U.S. 227, 241 (1937). The same principle applies to this appeal.

"Post card" registration, as adopted in California, has certain important advantages, not only over the old regulation system, but over the petition system as well. The relevant code sections are set forth in the Appendix. The basic change is obvious. The voter obtains a registration form which is suitable for mailing to the County Clerk. These

forms will be given out to any interested group. There is no sworn oath required. The voter can take it home or (a substantial advantage over a petition) it can be mailed to him or left on his door by the group seeking registration. This modification is not, as the appellants would have the Court believe, "only one minor factor" (Jur. Statement, p. 21) but a substantive change which, within the meaning of the *Hall* decision, makes the appeal of the appellants moot.

CALIFORNIA DOES NOT DENY EQUAL PROTECTION TO THE APPELLANTS BY PERMITTING A PARTY TO REMAIN QUALIFIED BY FULFILLING REQUIREMENTS DIFFERENT FROM QUALIFYING.

California permits a political group to qualify for the ballot by demonstrating voter support equal to 1% of the vote in the last gubernatorial election. Section 6430 (e). California permits a political party to remain on the state-wide ballot if one of its state-wide candidates obtains 2% of the entire vote in the last gubernatorial election and if it maintains one-fifteenth of one percent of the total state registration. Section 6430(d). The appellants argue that they are denied equal protection since they claim it is much more difficult to garner registration equal to 1% of the vote in the last gubernatorial election than it is to acquire 2% of the vote and to maintain the required registration.

This argument as it applies to current California law is speculative since California has changed the mechanical process of registration. Accordingly, the equal protection argument as it applies to current law is simply moot. Further, from a historical point of view, the Independent Progressive Party was disqualified from the ballot in 1954 when none of its candidates could obtain 2% of the vote (Exhibit M). The appellant Prohibitionist Party was disqualified from the 1964 ballot because it could not meet the registration requirement. Secretary of State, Report of Registra-

tion, January 1964, p. 1. Finally, the appellants are comparing two different things. The effort a political group must make to qualify for the ballot will always be greater than the amount of effort necessary to maintain itself on the ballot. The emerging political group must initially organize, spread its message, contact and convert supporters, and generally overcome the desire of most voters to retain traditional allegiances. Once this initial foundation is made, the party can build more support if its vitality remains. With the apppellant Prohibitionist Party and with the Independent Progressive Party, that vitality was lost. The American Independent Party and the Peace and Freedom Party have survived because they still attract voter support.

THE APPELLANTS CANNOT LEGITIMATELY COMPLAIN THEY WERE DENIED THE RIGHT TO PLACE THEIR NAME NEXT TO A CANDIDATE WHO WAS NOMINATED PURSUANT TO THE INDEPENDENT NOMINATION PROCEDURE SINCE THEY HAD THE ALTERNATIVE OF QUALIFYING AS A PARTY PURSUANT TO SECTION 6340—AN ALTERNATIVE THEY REJECTED.

The appellants argue that the District Court should have held that, once a political group through the independent nomination procedure qualifies a candidate for the statewide ballot, it is then automatically entitled to have its name printed after the candidate it nominated. The obvious difficulty with the appellants' analysis is that, regarding statewide candidates, if the party wishes to have its name next to its candidates or candidate, it has available the alternative of the party qualification provisions of section 6430. As long as California provides reasonable alternative of access which will satisfy a party's right to ballot access, California need constitutionally do no more. *Lubin* at 718. *Jenness* at 440-441. Compare *Buckley* at 4156-4157.

The appellants confuse the objectives of the independent nomination with party qualification. The independent nomination process is reserved for groups or candidates who wish to gain ballot access independent of any qualified party. *Storer* at 745. Further, the independent nomination procedure is available to groups who consider that they are unable to demonstrate support sufficient to qualify as a party but may qualify a candidate. For these reasons, the petition for an independent nomination does not require that the candidate or group identify itself by an organizational name. Section 6838. The candidate then appears on the ballot by demonstrating his individual support. He, of course, may be endorsed by a named political group but that does not mean he reached the ballot by a demonstration of support among voters who also support that political group. He will be denoted as an "Independent" on the ballot because he reached the ballot using the "independent" nomination procedure and "independent" of any qualified party. Section 10210.

Appellee's argument may or may not have the same validity regarding a candidate who has been nominated for a district office. However, that issue is currently on appeal by appellee to the Court of Appeals for the Ninth Circuit. The appellants obtained declaratory relief from the District Court that, as to district candidates, such a restriction to "independent" was unconstitutional. Nevertheless, the District Court denied the appellants injunctive relief. The appellee does not understand the appellants to be appealing this denial of injunctive relief regarding district offices. In any event, such an appeal cannot be taken since the order did not rest ". . . upon resolution of the merits of the constitutional claim presented below" *MTM, Inc. v. Baxley,* 420 U.S. 799, 804 (1975).

CONCLUSION

For the reasons given above, it is prayed this Court either summarily affirm the judgment of the District Court or dismiss the appeal as moot.

Respectfully submitted,

EVELLE J. YOUNGER
Attorney General of the
State of California

IVER E. SKJEIE
Assistant Attorney General

CHARLTON G. HOLLAND
Deputy Attorney General

Attorneys for Appellee
March Fong Eu, Secretary
of State of the State of
California

Appendix

— o —

These California Elections Code sections quoted below are the product of a significant change in the method by which registration is accomplished. The sections quoted below are the current law in California and can be found, with related code sections, in Deering's California Codes, Advance Legislative Service. Note especially pamphlet No. 8 which contains a complete index and tables regarding all 1976 legislation. Each code section, with one exception, appears in Stats. 1976, Ch. 1275, sec. 12. The one exception is California Elections Code section 500 which appears as amended by Stats. 1976, Ch. 1438, sec. 1.5.

— o —

500. The affidavit of registration shall show:

(a) The facts necessary to establish the affiant as an elector.

(b) Affiant's name at length, including his given name, and a middle name or initial, or if the initial of his given name is customarily used, then the initial and middle name. The affiant's given name may be preceded, at his option, by the designation of Miss, Ms., Mrs. or Mr. No person shall be denied the right to register because of his failure to mark a prefix to his given name and shall be so advised on the voter registration card.

(c) Affiant's place of residence, and residence telephone number, if furnished. No person shall be denied the right to register because of his failure to furnish his telephone number, and shall be so advised on the voter registration card.

(d) Affiant's mailing address, if different from the place of residence.

(e) Affiant's social security number, if furnished. If his social security number is not immediately available, the

affiant may mail the number to the county clerk on an addressed postcard provided for that purpose. No person shall be denied the right to register because of his failure to furnish his social security number and shall be so advised on the voter registration card.

(f) Affiant's date of birth.

(g) The state or country of affiant's birth.

(h) Affiant's occupation.

(i) Affiant's political party affiliation, if any.

(j) That the affiant is currently not imprisoned or on parole for the conviction of a felony which disqualifies him from voting.

(k) A prior registration portion indicating whether the affiant has been registered at another address under another name, or as intending to affiliate with another party. If the affiant has been so registered, he shall give such additional statement giving that address, name, or party.

The affiant shall certify the content of the affidavit as to its truth and correctness, under penalty of perjury, with his signature of his name at length, including given name, middle name or initial, or initial and middle name, and if he is unable to write he shall sign with a mark or cross. The affiant shall date the affidavit immediately following his signature.

If any person, including a deputy registrar, assists the affiant in completing the affidavit, that person shall sign and date the affidavit below the signature of the affiant.

300. No person shall be registered except as provided in this chapter unless upon the production and filing of a certified copy of a judgment of the superior court directing registration to be made.

301. No person shall be registered as a voter except by affidavit of registration. The affidavit shall be mailed or

delivered in person to the county clerk or his deputy and shall set forth all the facts required to be shown by this chapter. A properly executed registration shall be deemed effective upon receipt of the affidavit by the county clerk.

Notwithstanding any other provision of law to the contrary, the affidavit of registration required under the provisions of this chapter shall not be taken under sworn oath, but the content of the affidavit shall be certified as to its truthfulness and correctness, under penalty of perjury, by the signature of the affiant.

302. (a) It is the intent of the Legislature that the election board of each county, in order to promote and encourage voter registrations, shall establish a sufficient number of registration places throughout the county, and outside the county courthouse, for the convenience of persons desiring to register, to the end that registration may be maintained at a high level.

(b) It is also the intent of the Legislature that county clerks, in order to promote and encourage voter registrations, shall enlist the support and cooperation of interested citizens and organizations, and shall deputize as registrars qualified citizens in such a way as to reach most effectively every resident of the county. The persons so deputized shall be permitted to register voters anywhere within the county, including at the places of residence of the persons to be registered, and the county clerk shall not deny deputy registrars the right to register voters anywhere in the county.

(c) It is also the intent of the Legislature that non-English-speaking citizens, like all other citizens, should be encouraged to vote. Therefore, appropriate efforts should be made to minimize obstacles to registration by citizens who lack sufficient skill in English to register without assistance.

(d) Where the county clerk finds that citizens described in subdivision (c) approximate 3 percent or more of the voting age residents of a precinct, or in the event that interested citizens or organizations provide information which the county clerk believes indicates a need for registration assistance for qualified citizens described in subdivision (c), the county clerk shall make reasonable efforts to recruit deputy registrars who are fluent in a language used by citizens described in subdivision (c) and in English. Such recruitment shall be conducted through the cooperation of interested citizens and organizations and through voluntarily donated public service notices in the media, including newspapers, radio, and television, particularly those media which serve the non-English-speaking citizens described in subdivision (c). Deputy registrars so appointed shall facilitate registration in the particular precincts concerned and shall have the right to register voters anywhere in the county.

(e) In furtherance of the purposes of this section, the governing board of any county, city, city and county, district, or other public agency, may authorize and assign any of its officers or employees to become deputy registrars of voters and to register qualified citizens on any premises and facilities owned or controlled by such public agencies during the regular working hours of such officers or employees; provided, that with the exception of firemen, any compensation to which said officer or employee may be entitled in payment for the services of such officer or employee as a deputy registrar may be paid by the authority which appointed such officer or employee as a deputy registrar to the public agency which regularly employs such officer or employee.

(f) It is the intent of the Legislature that no limitation be imposed on the number of persons appointed to act as deputy registrars of voters.

303. It is the intent of the Legislature that the introduction of registration by mail shall not in any way lead to administrative limitations on the use of deputy registrars of voters for the purpose of assisting in the registration of persons who may continue to require such assistance.

It is the intent of the Legislature that registrars continue to be deputized by the county clerk pursuant to Section 302, but as the electorate becomes more conversant with mail registration procedures, the number of deputy registrars will naturally diminish due to a decrease in the demand for the services of such deputy registrars of voters.

304. It is the intent of the Legislature that voter registration be maintained at the highest possible level. The Secretary of State shall adopt regulations requiring each county to design and implement programs intended to identify qualified electors who are not registered voters, and to register such persons to vote. The Secretary of State shall adopt regulations prescribing minimum requirements for such programs. If the Secretary of State finds that a county has not designed and implemented a program meeting such prescribed minimum requirements, the Secretary of State shall design a program for such county and report the violation to the Attorney General.

305. The county clerk or his deputy shall accept affidavits of registration at all times except during the 28 days immediately preceding any election, when registration shall cease for that election as to electors residing in the territory within which the election is to be held. Transfers of registration for an election may be made from one precinct in the same county at any time when registration is in progress in the precinct to which the elector seeks to transfer.

306. The county clerk shall keep and maintain a current file listing all persons appointed or deputized by the county clerk to register voters, which file shall be open to public inspection. Such file shall include the party affiliation, if any, of each person listed.

307. Any person who is a registered voter qualifies for appointment as a deputy registrar of voters.

308. No county clerk may refuse to deputize any person to register voters because of race, creed, color, or national origin or ancestry.

309. A person may prove he is a citizen by his certification under penalty of perjury on the affidavit of registration.

310. Any elector absent from the county in which he claims residence may request a voter registration card from the county clerk of the county of residence. The county clerk shall furnish a voter registration card, to each elector requesting such card and showing that he will be temporarily absent from his home county. Upon receipt by the county clerk, the affidavit of registration shall be processed as required by this chapter.

311. The county clerk of any county in this state may receive the affidavit of registration of any elector who resides or claims residence in another county in this state. The affidavit shall be forwarded to the county clerk of the county in which the elector resides. The county clerk of the county in which the elector resides shall use the affidavit of registration from the other county as his permanent record.

Registration by this method shall be effective for all elections occurring 29 or more days after receipt of the affidavit of registration by the county clerk or his deputy to which the affidavit is mailed or delivered by the elector.

318. No fees may be charged for registration or certificates of registration.

501. At the time of registering and of transferring registration, each elector may declare the name of the political party with which he intends to affiliate at the ensuing primary election. The name of that political party shall be stated in the affidavit of registration and the index.

The voter registration card shall inform the affiant that any elector may decline to state his political affiliation, but no person shall be entitled to vote the ballot of any political party at any primary election unless he has stated the name of the party with which he intends to affiliate. The voter registration card shall include a listing of all qualified political parties.

No person shall be permitted to vote the ballot of any party or for any delegates to the convention of any party other than the party designated in his registration, except as provided by Section 502.

502. Whenever any voter has declined to designate or has changed his political affiliation prior to the close of registration for an election, he may either so designate or have a change recorded by executing a new affidavit of registration and completing the prior registration portion of the affidavit.

506. Subject to the provisions of this chapter, the affidavit of registration shall be in a form prescribed by regulations adopted by the Secretary of State. Such affidavit shall:

(a) Contain the information prescribed in Section 500.

(b) Be sufficiently uniform among the separate counties to allow for the processing and use by one county of an affidavit completed in another county.

(c) Allow for the inclusion of informational language to meet the specific needs of that county, including but not limited to, the return address of the clerk in that county,

and a phone number at which a voter can obtain elections information in that county.

(d) Be included on one portion of a multipart card, to be known as a voter registration card, the other portions of which shall include information sufficient to facilitate completion and mailing of the affidavit and to inform the voter, that he should not consider himself registered until he receives a voter notification by return mail.

(e) Be returnable to the county clerk as a self-enclosed mailer with postage paid by the Secretary of State.

507. In addition to registration conducted by deputy registrars of voters, the county clerk shall, as follows:

(a) Provide voter registration cards for the registration of voters at his office and in sufficient number of locations throughout the county for the convenience of persons desiring to register, to the end that registration may be maintained at a high level.

(b) Provide voter registration cards in sufficient quantities to any citizens or organizations who wish to distribute such cards. Such citizens and organizations shall be permitted to distribute voter registration cards anywhere within the county.

(c) Mail a voter registration card immediately to any person who wishes to register to vote and requests a voter registration card.

508. Each affidavit of registration issued to a deputy county clerk or registration clerk shall meet the requirements prescribed by Section 506, except that the voter registration card shall be modified, pursuant to regulations adopted by the Secretary of State, to reflect the use of a deputy registrar of voters in lieu of mail delivery. A stub, separated from the body of the voter registration card by a perforated line, shall be attached to each such affidavit.

Upon the stub shall be printed the number of the affidavit and blanks for the following:

(a) The name, residence, political affiliation, and signature of the voter.

(b) The signature of the registration clerk or deputy registrar taking the registration.

(c) The date.

At the time of registering the voter, the registration clerk or deputy registrar shall fill in the blanks in the stub, and require the voter to sign the stub in the place provided. He shall then detach the stub and the informational portion of the voter registration card from the affidavit and hand the stub and information to the voter.

509. The Secretary of State shall print, or cause to be printed, the blank forms of the affidavits of registration and voter registration cards prescribed by this code. The Secretary of State shall bind and number, or cause to be bound and numbered, affidavits of registration and voter registration cards as required by this code. The Secretary of State shall supply such forms to the county clerk in quantities and at times as requested by the county clerk.

510. The Secretary of State shall pay all postage for the (a) mailing of the voter notification and the address correction service pursuant to Section 503, (b) return to the county clerk of the affidavits of registration pursuant to Section 506, (c) mailing of blank voter registration cards pursuant to subdivision (c) of Section 507 (d) any mailing of blank voter registration cards pursuant to programs adopted under the provisions of Section 304. All payments made pursuant to this section shall be made directly from funds appropriated to the Secretary of State for this purpose.

511. Affidavits of regiistration for the whole of each county shall be filed, as fast as the registration progresses,

in any orderly arrangement as prescribed by the county clerk. If the affidavits are not filed alphabetically without regard to precinct, the county clerk shall, by electronic, electromechanical or other suitable means, provide, for general use in his office, a comprehensive, printed alphabetical index to the surnames of voters on all uncanceled affidavits for the whole of the county, whereby the affidavit of registration of any voter may be ascertained and produced. In the case of voters having the same surname, the classification of names appearing on the index shall extend to the given and, where necessary, the middle name or initial.

512. Upon the personal or written application of any person, the county clerk shall give him a certified copy of the entries upon the register relating to the applicant.

A certified copy of an uncanceled affidavit of registration is prima facie evidence that the person named in the entry is a voter of the county.